

## REMARKS

Claims 1-5 are pending in the application. In the Office action dated September 6, 2007, claims 1-5 were rejected. Claims 1 and 4 have been amended. In view of the above amendments and the following remarks, Applicants respectfully request reconsideration of the rejected claims and allowance of the application.

### ***Telephonic Interview***

Applicants thank the Examiner for the courtesy of a telephonic interview on November 2, 2007. The proposed amendment to claims 1 and 4 was discussed. The Examiner indicated that the proposed amendment would address the rejections under 35 U.S.C. § 112, and that the amended claims would be allowable over the prior art.

### ***Rejections under 35 U.S.C. § 112***

Claims 1-5 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as their invention.

In particular, the Examiner indicates the claims are unclear in that they fail to include details on how to determine a property of retaining a fixed shape. In response, Applicants have amended claims 1 and 4 to include a description of how the property of retaining a fixed shape is measured. Support for the amendment is found in the specification at pages 18 and 19, and in Fig. 7.

In view of the amendments to claims 1 and 4, Applicants respectfully suggest that the claims particularly and distinctly define the claimed subject matter. Applicants therefore request the withdrawal of the rejection of claims 1-5 under 35 U.S.C. § 112.

***Rejections under 35 U.S.C. § 102***

Claim 1 remains rejected under 35 U.S.C. § 102(b) as being anticipated by Kincel et al. (U.S. Patent no. 6,372,068). In particular the Examiner asserts that Kincel et al. discloses a twist having all the characteristics of the twist tie of claim 1. In particular, the Examiner asserts that the property of retention of a fixed shape of 95% or less is determined from the additional deformation that the twist tie will experience after being released by the user until the tie settles. Applicants respectfully disagree.

In order to anticipate a claim under 35 U.S.C. § 102, a cited reference must disclose each and every element of the claim, as it is set forth in the claim. Claim 1, as amended, recites a nonmetallic twist tie having (among other characteristics) a property of retaining a fixed shape of 95% or less. The claim further recites how the property of retaining a fixed shape is determined; including a formula for calculating the property of retaining a fixed shape for a given twist tie.

Applicants suggests that the Kincel et al. reference fails to disclose a twist tie having the property of retaining a fixed shape of 95% or less, and that therefore, Kincel et al. fail to anticipate the twist tie of claim 1.

Claim 1 remains rejected under 35 U.S.C. § 102(e) as being anticipated by Contreras et al. (U.S. Patent no. 7,011,879). In particular the Examiner asserts that Contreras et al. discloses a twist having all the characteristics of the twist tie of claim 1. In particular, the Examiner asserts that the property of retention of a fixed shape of 95% or less is determined from the additional deformation that the twist tie will experience after being released by the user until the tie settles. Applicants respectfully disagree.

Applicants suggests that the Contreras et al. reference fails to disclose a twist tie

having the property of retaining a fixed shape of 95% or less, and that therefore, Contreras et al. fail to anticipate the twist tie of claim 1.

As neither Kincel et al. nor Contreras et al. disclose the measurement of the property of retaining a fixed shape, as recited in claim 1 and as defined in the specification, and furthermore as neither Kincel et al. nor Contreras et al. disclose the selection of a twist tie having a property of retaining a fixed shape of 95% or less, Applicants suggest that the subject matter of claim 1 is novel with respect to the cited references.

Applicants therefore respectfully request the withdrawal of the rejections of claim 1 under 35 U.S.C. § 102.

#### ***Rejections under 35 U.S.C. § 103***

Claims 2-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kincel et al. In particular, the Examiner asserts that it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture a twist tie having the properties recited in claims 2-5, since the twist tie meets all the structural limitations and is made from the same materials being claimed.

Applicants respectfully disagree. As discussed above, Kincel et al. fail to disclose a twist tie having a property of retaining a fixed shape of 95% or less, as recited in claim 1. In order to establish the *prima facie* obviousness of a claim, the prior art must disclose each and every element of the claim. As claims 2-5 depend from claim 1, Applicants suggest that the *prima facie* obviousness of claims 2-5 has not been established.

Furthermore, the Kincel et al. reference fails to provide a motivation to fabricate a twist tie having a property of retaining a fixed shape of 95% or less, as Kincel et al. teaches that a maximal retention of an applied fold is most desirable. Specifically, the ability of the twist ties of Kincel et al. to maintain a formed twist is measured using the so-called "dead fold test," where the tie is folded 180 degrees, and then permitted to relax for three minutes (as discussed by Kincel et al. at col. 6, lines 22-33).

According to Kincel et al., therefore, an acceptable tie is one that exhibits a dead fold angle of no greater than 10 degrees, and retains this 10 degree angle even when permitted to relax for a minimum of three minutes. The preferred twist of the cited references would therefore have a property of retaining a fixed shape of 100%. In contrast, the twist ties of claim 1 *must* relax sufficiently within *two* minutes to demonstrate retention of a fixed shape of no more than 95%, as recited in claim 1.

Furthermore, Kincel et al. fails to disclose the advantageous nature of a twist tie having a retention of fixed shape of less than 95%. In their specification, Applicants describe that a desirable twist tie is one that neither retains a fixed shape permanently, nor relaxes too extensively, particularly where the twist tie is wound on a reel for use in a binding machine, as discussed at page 8, paragraph 2 to page 9, paragraph 5. More particularly, as stated at page 13, paragraph 4, "when the property of retaining a fixed shape was less than 70%, there were many cases where disjoining of the tie 1 from the reel 2a was induced while, when it was more than 95%, the recovering force is poor whereby frequency of slipping down into the gap and tangling and twining of the lines was much" (emphasis added).

Applicants suggest that in view of the above amendments and remarks, they have demonstrated that the *prima facie* obviousness of claims 2-5, as amended, is not established by the Kincel et al. reference. Applicants therefore respectfully request the withdrawal of the rejections of claims 2-5 under 35 U.S.C. § 103.

Applicants believe that this application is now in condition for allowance. Accordingly, Applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned agent of record.

CERTIFICATE OF E-FILING

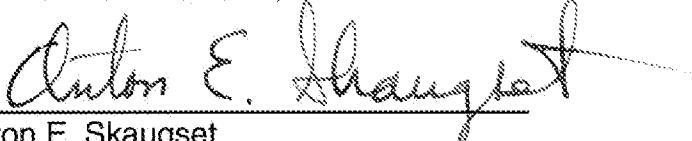
I hereby certify that this correspondence is being transmitted electronically via the United States Patent and Trademark Office's EFS-Web System on November 7, 2007.

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Respectfully submitted,

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